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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,082	09/12/2003	Kenneth J. Taylor	19898/21-CON	9804

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EXAMINER	
GORTAYO, DANGELINO N	
ART UNIT	PAPER NUMBER
2168	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/662,082	TAYLOR, KENNETH J.	
	Examiner	Art Unit	
	Dangelino N. Gortayo	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 7 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 7 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The amendments to claim 7 filed 10/18/2006 have been received and entered.

2. Claim 7 is now pending.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 7 is **provisionally** rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of **US Patent 6,658,589 B1**

Claim 1 of US Patent 6,658,589 B1 contains every element of claim 7 of the instant application and as such anticipates claim 7 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Bamford et al. ("Bamford" US Patent 5,449,367, issued 3/12/1996)

As per claim 7, Bamford teaches "In a computer system having a plurality of nodes, each node having access to a shared database and also having local storage," (Figure 3, wherein client nodes composed of memory and a processor access a shared

database) "wherein at least one of said plurality of nodes includes a redo log in local storage for said node, said redo log including information regarding data in said shared database," (column 7 lines 1-19, wherein the clients include a log to track changes in database) "a method of performing a backup operation of said shared database" (see Abstract and column 5 lines 6-22)

"selecting one of said plurality of nodes to perform said backup operation;" (column 12 line 10 – column 14 line 9, wherein a client is chosen and submits database modification requests)

"obtaining information regarding a directory location of said local redo log for said at least one node;" (column 10 lines 23-59 and column 14 lines 3-9, wherein a log is located for the client)

"setting said local redo log to be read/write accessible by said selected backup node;" (column 6 lines 3-14 and lines 31-39, wherein the log can be read and written by clients)

"backing up data in said shared database by accessing data in said shared database and also in said local redo log to perform said backup operation." (column 8 lines 33-54 and column 11 lines 23-34, wherein a client looks at the log to ensure transaction integrity, and writes to the database and the log)

Response to Arguments

7. Applicant's arguments, see page 3, filed 10/18/2003, with respect to the double patenting rejection, have been fully considered but they are not persuasive. No arguments were put forth, and the previous Double Patenting rejection stands.

8. Applicant's amendment, see page 3, filed 10/18/2006, with respect to the rejection of claim 7 under 35 USC 101 have been fully considered and is persuasive. The rejection of claim 7 under 35 USC 101 has been withdrawn.

9. Applicant's arguments, see page 3, filed 10/18/2003, with respect to the 35 USC 102(b) rejection, have been fully considered but they are not persuasive.

a. Applicant's argument is stated as Bamford does not disclose a method of performing backup operation of a shared database.

In response to the argument, Examiner respectfully disagrees. Bamford discloses a method wherein changes to a block of data in storage are stored in a log for recovery, wherein changes are written to preserve and backup the original data compared to the changes in column 5 lines 6-22. Irregardless, "the method of performing a backup operation of said shared database" of the instant application is found in the preamble of the claim, and holds little patentable weight.

b. Applicant's argument is stated as Bamford does not disclose selecting one of said plurality of nodes to perform said backup operation, and does not disclose or suggest a backup function.

In response to the argument, Examiner respectfully disagrees. Bamford teaches that a log manager communicates between a log buffer and log storage,

wherein logs store changes to database. Users can submit requests to determine database areas that require modification to a previous state and the appropriate log entries are read indicating changes to a previous state (column 12 line 10 – column 14 line 9). Data recovery is a process wherein data is restored to a database after failure to a known step, acting as a backup in case of failure (column 11 lines 37-45). Therefore, Bamford discloses selecting one of said plurality of nodes to perform said backup operation, including backup operations.

c. Applicant's argument is stated as Bamford does not disclose or suggest "obtaining information regarding a directory location of [a] local redo log... [and] backing up data in said shared database by accessing data in said shared database and also in said redo log..."

In response to the argument, Examiner respectfully disagrees. Bamford teaches that log entries contain data identifiers and addresses that indicate change type and data location (column 10 lines 23-59) and any changes to the data log is stored in log buffer and a log entry is written (column 11 lines 23-34). The method steps of recovering data after a failure is shown in column 12 line 10 – column 14 line 9, wherein a failure is detected and the log entries are used to modify the data to a previous known state to redo the changes, backing up data in the database. Therefore, Bamford discloses "obtaining information regarding a directory location of [a] local redo log... [and] backing up data in said shared database by accessing data in said shared database and also in said redo log..."

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dangelino N. Gortayo whose telephone number is (571)272-7204. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dangelino N. Gortayo
Examiner

Tim T. Vo
SPE

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